IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.1790 OF 2007

Mr.Hemraj Shravan Bari ...Petitioner

V/s.

Mrs.Kalpana Hemraj Bari ...Respondent

Mr.Madhav Jamdar for Petitioner.
Mr.O.R. Tiwari for Respondent.

CORAM : V.M. KANADE, J.

DATED : 20th SEPTEMBER, 2007.

P.C:-

1. Heard learned counsel for the Petitioner and learned counsel for the Respondent.

2. Petitioner has filed this petition challenging order passed by the Family Court, Mumbai dated 7th November, 2006 whereby the application filed by the Respondent-wife was partly allowed and the Petitioner herein was directed to pay interim alimony @ of Rs.5000/- per month to his daughter from the date of the Petition. The Family Court, however, rejected the application of the Respondent for grant of interim maintenance.

3. Learned counsel for the Petitioner submits that during the pendency of this petition, the Family Court has directed the Petitioner to pay interim alimony of Rs.5000/-to the daughter from the date of petition till the

culmination of the proceedings. He submits that, therefore, he is not challenging the order in so far as he is directed to pay the monthly instatlment of Rs.5,000/-. He submits that however, the Trial Court has directed the Petitioner to pay maintenance from the date of Petition and not from the date of the application for maintenance.

4. Learned counsel for the Respondent, however, invited my attention to the application which is filed by the Respondent here under which circumstances the Respondent had to take care of her daughter and no amount of maintenance was paid by the Petitioner herein and therefore, she was compelled to file application for maintenance on 25th April, 2006 though the Petition was filed by the Petitioner herein on 11/07/2003.

5. In my view, order passed by the Trial Court is liable to be modified and in stead of payment of maintenance from the date of the Petition, the Petitioner is directed to pay maintenance from the date on which the Respondent filed application for maintenance i.e. 25th April, 2006.

6. In the present case, the Petitioner has filed the petition for divorce on 11/07/2003. The Petitioner left the matrimonial house and is residing in another premises on leave and license basis. In his reply to the application for maintenance he has stated that he is willing to pay entire maintenance of his daughter provided the Respondent gives access to his daughter.

Moreover, the petitioner has already deposited amount of Rs.50,000/- in this Court. This Court had directed the parties to explore the possibility of settlement by referring them to the Mediator. But the differences between them could not be resolved. Taking an over all view of the matter and keeping in view interest of the child, it would be appropriate if the said order is modified. It is always open for the Respondent herein to seek enhancement of maintenance if in future additional amount is required to be spent for the child for her education or meeting other necessary expenses.

7. Hence, the Writ Petition is allowed in the above terms and the Petitioner is directed to pay maintenance of Rs.5,000/- monthly to the daughter from the date of application filed by the Respondent i..e. 25th April, 2006. The Respondent is given liberty to withdraw the amount which is deposited by the Petitioner in this Court. Said amount may be adjusted towards arrears of maintenance. Petitioner shall pay balance arrears within two months.

. Writ Petition is disposed of accordingly.

V.M. KANADE, J.